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Mary L. Brown
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NOV 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 13, 1998

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170

Dear Ms. Salas:

Enclosed herewith for filing are the original and four (4) copies of MCI WorldCom's Comments regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI WorldCom Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Mary L. Brown

Enclosure
MLB

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

NOV 13 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of:

**Truth-in-Billing
and
Billing Format**

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)

CC Docket No. 98-170

MCI WORLDCOM, INC. COMMENTS

**Mary L. Brown
Don Sussman
MCI WORLDCOM, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC, 20006
(202) 887-2779**

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Summary

In its Notice of Proposed Rulemaking, released September 17, 1998, the Commission seeks comment on whether and how to regulate carrier billing to enable consumers to reap the benefits of the competitive telecommunications marketplace, while at the same time protecting consumers from unscrupulous competitors. To achieve this end, the Commission proposes to promulgate guidelines concerning billing disclosures, which may include a preferred standardized organization of bills, a minimum set of information that should be contained on each bill, as well as specific language carriers should use to describe and explain existing and new charges.

Due to the vibrant competition in the long distance market, carriers such as MCI WorldCom devote constant attention to billing and other consumer communication. As in most matters of telecommunications policy, the optimal solution is a competitive market with real and effective carrier choices to ensure that carrier billing is clearly and easily understandable. Based on MCI WorldCom's research and experience, customer confusion of long distance carriers' bills is not an issue that warrants prescriptive or proscriptive action.

If, however, based on factual evidence, the Commission determines that significant customer confusion of long distance or industry bills exists, the Commission should adopt in this proceeding a set of guidelines -- drawing on the presentation of the MCI WorldCom direct remit bills -- that carriers can incorporate into their bills. In MCI WorldCom's view, competitive markets create the best assurance of consumer friendly billing practices because poor or

confusing bills will reduce demand for a carrier's services. Of course, an individual carrier seeking short-term gain by issuing erroneous or confusing bills should remain subject to Commission enforcement action.

Guidelines are the most effective means to achieve the Commission's goal -- that customers receive clear and understandable bills -- without imposing regulations that would increase individual carrier's cost by tens of millions of dollars annually, and that ultimately would be borne by end users in the form of higher rates. Guidelines would allow the Commission to initiate enforcement activity, and would provide policy guidance to the Commission in adjudicating customer complaints. This approach also rests on firm legal ground as the Commission prepares to regulate in an area that has not previously been subject to Commission regulation.

MCI WorldCom also advocates that, for areas in which competition has not yet developed, such as ILEC billing on behalf of unaffiliated carriers, the Commission should delineate prescriptive rules that ensure that carriers relying on these billing "bottlenecks" can effectively, and clearly, communicate with their customers, and that unaffiliated entities are protected from potential discrimination. These rules are essential because competitive forces have not yet developed to provide billing alternatives for long distance companies, especially in cases where the interexchange carrier has no other business relationships with the end user (e.g., casual calling). These rules must include language that clarifies that ILECs are required to bill for "casual services" on a nondiscriminatory basis.

**Before the
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MCI WORLDCOM, INC. COMMENTS

I. Introduction

In its Notice of Proposed Rulemaking,¹ released September 17, 1998, the Commission seeks comment on whether and how to regulate carrier billing to enable consumers to reap the benefits of the competitive telecommunications marketplace, while at the same time protecting consumers from unscrupulous competitors.² To achieve this end, the Commission proposes to promulgate guidelines concerning billing disclosures, which may include a preferred standardized organization of bills, a minimum set of information that should be contained on each bill, as well as specific language carriers should use to describe and explain existing and new charges.³

¹In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, Notice of Proposed Rulemaking, FCC 98-232, released September 17, 1998 (Notice).

²Notice at 5.

³There is some ambiguity in the Notice as to whether the Commission is proposing policy guidelines, prescriptive rules, or both. Based on the Commission's concluding paragraph (¶ 71) and the absence of proposed rule language, it appears that the Notice proposes guidelines about what carriers should do -- as opposed to prescriptive or proscriptive rules mandating particular conduct. To the extent the Commission chooses to regulate, MCI WorldCom prefers guidelines, as discussed infra.

MCI WorldCom, Inc., (MCI WorldCom) agrees with the Commission that carriers have an obligation to provide their customers with the information they need to make informed choices. Unlike the monopoly incumbent local exchange carriers (ILECs), MCI WorldCom has never been guaranteed a customer base. From its inception, MCI WorldCom has had to compete for, and earn, every one of its customers.⁴ Clear communications with customers, in the form of bills, marketing messages, advertisements, and information delivered by account teams or customer service representatives, are essential for a carrier to compete successfully in today's telecommunications marketplace. That is why MCI WorldCom spends millions of dollars and thousands of person hours surveying customers, training customer service representatives and account teams, updating billing formats, and developing national marketing messages to ensure that customers know and understand what MCI WorldCom services, promotions, rates and charges are available, and to ensure that our customers can easily contact us with any questions and concerns. In fact, in comments that follow, MCI WorldCom suggests the Commission draw on its bills as a basis for industry guidelines the Commission might promulgate.

There can be no question that the long distance industry is competitive, and consequently, that consumers have many choices of providers. As the Commission recently noted, there are more than 600 carriers in the United States that provide long distance services.⁵ Additionally, as

⁴ Today's MCI WorldCom is a combination of new entrants in both long distance and local exchange markets, including MCI, WorldCom, MFS, and Brooks.

⁵ In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., Memorandum

the Commission points out in its report entitled "Long Distance Market Shares, Second Quarter, 1998," based on the Hirschman-Herfindahl Indices (HHI), market concentration within the long distance industry has fallen dramatically since 1984, from 8,155 to 2,508 when based on long distance revenue.⁶ When these statistics are coupled with the fact that last year over 26 million customers were reported to have changed long distance service providers,⁷ it is clear that not only do customers have a choice of long distance providers, but they can and do switch providers often.⁸

Given the strong competitive forces that exist in the long distance industry today, which drive most carriers to devote constant attention to billing and other customer communications, the Commission should proceed carefully as it decides whether to regulate carrier billing, and to what extent it should exercise its jurisdiction. The Commission correctly concluded in its Notice that "it is in the interest of IXCs and other carriers to inform fully their end user customers of the nature and amount of all charges they assess, including any separate line item charges they

Opinion and Order, CC Docket No. 97-211, released September 14, 1998, at ¶32.

⁶ Long Distance Market Shares, Second Quarter, 1998, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, September 1998, at 10. The Hirschman-Herfindahl Indices (HHI) are the sum of squares of the market shares of the companies in a particular industry and is used by the Department of Justice to measure changes in industry concentration resulting from horizontal mergers or acquisitions.

⁷ According to The Yankee Group's 1998 Technologically Advanced Survey (TAS), September 1998.

⁸ The Commission itself pointed out in its "How To Select a Long Distance Telephone Company" Fact Sheet, released March 1996, that if a customer is unhappy with the long distance provider he or she selected, the customer can change to another long distance carrier at any time.

choose to impose for universal service and access, in order to preserve their customers' belief in the integrity of carrier billing."⁹ The market place and competition are the most effective means for protecting consumer interests. Carriers that do not communicate effectively with their customers in the long distance market will lose those customers. The same is true in other competitive telecommunications segments.

For example, if some of the proposed policy guidelines were adopted as prescriptive ("thou shall..."), or proscriptive ("thou shall not...") rules, the costs to carriers, and ultimately, consumers, would be significant. Prescriptive or proscriptive rules would have the adverse effect of reducing customers' choice, raising carriers' (and ultimately end users') costs, and stifling an interexchange industry that has transformed a long-standing commodity service into a dynamic customer-oriented marketplace. Rather than imposing regulations that would increase individual carrier's cost by tens of millions of dollars annually -- costs that ultimately will be borne by end users in the form of higher rates -- the Commission should adopt in this proceeding a set of guidelines by which it expects carriers operating in competitive markets (such as the long distance industry) to incorporate into communications with customers.¹⁰ Such principles, combined with market forces and the authority the Commission currently has under section 201(b) to protect customers from company-specific egregious behavior, are the most effective

⁹ Notice at 7.

¹⁰ MCI WorldCom has made no attempt to estimate the additional costs competitive LECs would bear. It seems fair to assume, however, that on a per account basis, the cost of CLEC compliance with rules would be even higher than for large interexchange carriers.

means to achieve the Commission's goal -- that customers receive clear and understandable bills. This approach also rests on the firmest legal ground as the Commission prepares to regulate in an area that has not previously been subject to Commission regulation.

MCI WorldCom also advocates that, for areas in which competition has not yet developed, such as ILEC billing on behalf of unaffiliated carriers, the Commission should delineate prescriptive rules that ensure that carriers relying on these billing "bottlenecks" can effectively, and clearly, communicate with their customers, and that unaffiliated entities are protected from potential discrimination. These rules are essential because competitive forces have not yet developed to provide billing alternatives for long distance companies, especially in cases where the interexchange carrier has no other business relationships with the end user (e.g., casual calling). These rules would include language that clarifies that ILECs are required to bill for "casual services" on a nondiscriminatory basis.

II. MCI WorldCom Is A Leader In Communicating With Customers

MCI WorldCom is the second largest long distance provider in the United States, serving more than 15 million residential and small business customers, in addition to a large portion of the higher end business markets segments. Our long distance rates and programs are available throughout the United States, and typically are among the most competitive and innovative. While we continue to move to a system of directly billing our customers (through MCI WorldCom "direct remit" billing), due to the ILECs' continued dominance of the billing market,

most of our customers continue to receive their long distance bills as part of their local bill. This IXC-ILEC billing relationship offers many benefits. However, it also limits the IXC's ability to design its billing statements, reduces the IXC's flexibility to make last-minute changes (due to ILEC imposed time lines), and transfers ultimate control over billing "literals" (i.e., messages, descriptions of charges, etc.) from the IXC to the ILEC. Consequently, when evaluating the success of today's billing practices, the Commission must take into consideration that two, very separate and distinct, billing environments exist within the long distance industry: IXC "direct remit billing" and IXC use of ILEC billing.

A. MCI WorldCom Direct Remit Bills Reflect Principles That Ensure Customers Receive Clear and Accurate Bills

As discussed above, MCI WorldCom fully appreciates that long distance customers have a large selection of service providers from which to choose. MCI WorldCom also understands that the relationship between the carrier and the end user must be built on many different levels, and that quality service does not begin and end with transmission of a phone call. This relationship is based on, and is often evaluated on, the carrier's ability to communicate clearly with the customer, through billing, account teams, marketing messages, advertisements, and customer service representatives. MCI WorldCom, therefore, spends considerable resources annually on focus groups, customer surveys, and expert consultants in order to develop and modify our customer outreach (i.e., billing) so that it reflects customer desires. For example, MCI WorldCom spent millions of dollars modifying its direct remit and ILEC-generated

residential bills in 1992, 1994, and 1996 to reflect customer surveys and focus groups.

Additionally, in 1996, MCI WorldCom spent millions of dollars to purchase equipment which allows customers to receive bills printed on both sides of the page, as they requested.

MCI WorldCom's research and experience supports the Commission's general conclusion that customers want clear and easily understandable bills.¹¹ Our research and experience also show that customers believe it is important for carriers to print prominently, at the beginning of the bill, and on the top of every page of the bill, the name of the carrier providing service, the customer's account number, the customer's telephone number, and the date of the statement. Customers also desire a mechanism that they can use to contact the carrier with questions and concerns.¹²

Customers also expect information at the beginning of the bill that summarizes the amount of charges that are due, shows when the last payment was received and that it has been credited to the account, and informs the customer when the next payment is due. Customers also expect that the size of the writing in the bills be large enough that it can easily be read, and, while they do not expect explanations of every single charge each month, they expect their carriers to

¹¹ MCI WorldCom residential and small business customer communications reflect customer desires that are different than MCI WorldCom's large business customers. One reason for this is because MCI WorldCom communicates with large customers primarily through account teams, whereas we communicate to residential and small business customers primarily through bills, customer service representatives, written communications and over the telephone.

¹²Toll free customer service number(s) or, as appropriate, the online address (URL) for customer service of the carrier providing service should be provided and staffed to handle customer inquiries regarding billing issues.

inform them of charges that could significantly impact the bottom-line cost of their service. Additionally, customers prefer bills that include a preprinted return envelope, facilitating payment.

While customers do not expect carriers to provide detailed explanations of each of the thousands of rate elements and services, they do expect to be billed in accordance with legally tariffed rates, terms, and conditions. Our research and experience also show that customers prefer that carriers separate and distinguish, within their bills, regulated services (such as basic telephone service) from non-regulated services (such as Internet service), local from long distance services, as well as a separate section for taxes and surcharges. Customers also expect that within each section, sufficient information is provided on the bill to allow the customer to determine the validity of the charges (e.g., the date, time, place, called number, rate category, duration, and cost of each call). However, the level of billing detail should not result in customer confusion or additional costs that ultimately will be borne by the end user. To facilitate review of the bills, customers also expect carriers to send bills within a reasonable period after a service has been rendered.

As is illustrated on the sample residential direct-remit bill below, MCI WorldCom's direct-remit bills are not only clear and easily understandable on their face, but they reflect all of the above-mentioned customer desires:

MCI Account: 74163
Telephone: 805-123-4567

Statement Date
October 3, 1998

MCI Customer Service: 1-800-462-4663 Page 1 of 5



All customer information and a 24hr - 7 day a week toll free customer service contact number is located on every page of the bill.

Service Provider's logo clearly marked within the header on every page.

Summary of Charges

Previous Charges..... \$47.34
Payments through 11/26/98... \$47.34 Cr
Balance Forward..... \$.00

Current Charges..... \$75.54

Total Amount Due..... \$75.54

Payment Due Date..... 10/24/98

Great news! As of September 1998, we have merged with WorldCom Inc., a leading provider of long distance, local, data and internet services. The new company is called MCI WorldCom. You will continue to benefit from the same great savings that you enjoy today. In the coming months you will begin to see gradual alterations to your invoice to reflect our new name. We appreciate your patience as we incorporate these changes.

Clear summary of total charges incurred, payment required, and date by which payment is due.

PLEASE FOLD BELOW AND DETACH RETURN ONLY LOWER PORTION

Statement Date: October 3, 1998
Payment Due Date: October 24, 1998

MCI Account Number: 74163
Balance Due: \$75.54

Indicate amount paid

Please make check or money order
PAYABLE TO MCI. DO NOT SEND CASH.
Return this form with your payment.
Mail To:

|||||
MCI RESIDENTIAL SERVICE
PO BOX 52252
PHOENIX, AZ 85072-2252

Payment and mailing instructions

MCI Account: 74163
Telephone: 805-123-4567

Statement Date
October 3, 1998



MCI Customer Service: 1-800-462-4663 Page 2 of 5

Where to pay your bill?

Your payment must be received by the "PAYMENT DUE DATE" in order to be reflected on your next invoice. If we don't receive payment for the charges on this statement by the "PAYMENT DUE DATE", your account will become past due and subject to a late payment charge as applicable in your state.

How to pay your bill

Mail your check and remittance stub in the return envelope or a standard envelope and return to:

MCI
P.O. Box 52252
Phoenix, AZ 85077-2252

Correspondence and Internet Access

*Written Inquiries: MCI, PO Box 4600, Iowa City, IA 52244-4600
*Internet Access: <http://www.mciworldcom.com>

Changes to your account - Moving?

If you're moving or need to make changes to your account, please call the MCI Customer Service number shown above. A Customer Service Professional will be happy to assist you.

Questions about your bill

Your local service provider is MCI Metro Access Transmission Services Inc. If you have any questions, please call Customer Service. If you believe you have been billed incorrectly, you may file a complaint with the CA Public Utilities Commission, Consumer Affairs Branch (CPUC-CAB), 505 Van Ness Ave, San Francisco, CA 94102 or 107 South Broadway, Room 5109, Los Angeles, CA 90012. To avoid having service disconnected, payment of the disputed bill should be made "under protest" to the CPUC or payments arrangement should be made agreeable to MCI WorldCom pending the outcome of the CPUC-CAB review. The CPUC-CAB shall review the billed amount, communicate the results and inform you of your recourse to pursue the matter with the Commission.

Information on how to correspond by mail and by the Internet.

Information explaining how customers with questions or concerns about their local phone service can contact a state regulator.

"Countdown to Smart Dialing" contains ten of the most important dialing tips that consumers must know when they pick up the phone. It includes cost-cutting hints, tools to fight phone scams and a handy cut-out Smart Dialing Guide. "Countdown" was just released by Call For Action, a Washington, DC-based consumer advocacy group and MCI WorldCom. You can get your free copy by sending a self addressed stamped envelope to Call for Action, 5272 River Rd., Bethesda, MD 20816 or visit MCI's web site at <http://www.mci.com> and search for Countdown.

Consumer education message.

Invoice Continues

MCI Account: 74163
Telephone: 805-123-4567

Statement Date
October 3, 1998

MCI Customer Service: 1-800-462-4663 Page 3 of 5



Charges broken down by service type.

Local Service Summary

Service for 805-123-456
MCI One with local service (10/1/98 to 10/31/98) \$16.30
\$16.30

MCI One with local service includes discounted monthly charges, unlimited local calls approximately 0-12 miles from home and simple long distance rates.

Long Distance Summary

Long Distance..... \$48.45
\$48.45

Taxes and Surcharges..... \$10.79

Current Charges \$75.54

Local Directory Assistance

Calls from 805-123-4567

	Calls	Amount
Total Directory Assistance	2	
Directory Assistance Allowance	5	
Directory Assistance Charges	0	\$.00

With MCI, you get 5 free Directory Assistance calls each month.

Product messages describing service customer is receiving.

Long Distance

Calls from 805-123-4567

Date	Time	Place	Number	Rate	Min	Amount
Sep 3	9:10a	Redondo, CA	310-375-0000	Peak	1	.14
Sep 3	10:19a	Pasadena, CA	626-449-0000	Peak	33	4.70
Sep 3	11:43a	Losangeles, CA	323 666-0000	Peak	1	.14
Sep 4	3:56p	Losangeles, CA	323 666-0000	Ofpk	4	.38
Sep 5	10:15a	Losangeles, CA	323 666-0000	Ofpk	1	.09
Sep 5	11:56a	Losangeles, CA	323 666-0000	Ofpk	1	.09
Sep 5	1:37p	Losangeles, CA	323 666-0000	Ofpk	1	.09
Sep 6	3:21p	Saratogspr, NY	518-583-0000	5cent	41	2.05
Sep 8	7:07p	Losangeles, CA	323 666-0000	Peak	10	1.42
Sep 12	12:32p	Ojai, CA	805-646-0000	Ofpk	2	.18
Sep 12	2:57p	Oxnard, CA	805-485-0000	Ofpk	2	.09
Sep 13	9:45a	Ojai, CA	805 646-0000	Ofpk	1	.09
Sep 13	10:17a	Redondo, CA	310-375-0000	Ofpk	1	.09
Sep 13	10:18a	Hernet Anza, CA	909 763-0000	Ofpk	1	.09
Sep 13	2:27p	Saratogspg, NY	518-583-0000	5cent	1	.05
Sep 13	3:41p	Hernet Anza, CA	909-763-0000	Ofpk	22	2.09
Sep 13	4:08p	Monrovia, CA	626 358-0000	Ofpk	37	3.51
Sep 14	6:04p	Saratogspg, NY	518-583-0000	5cent	76	3.80
Sep 14	6:04p	Saratogspg, NY	518-583-0000	Peak	12	3.12
Sep 17	8:49a	Monrovia, CA	626 358-0000	Peak	1	.14

MCI
friends&family

5 cent Sundays! We hope you are enjoying 5 cents a minute on all your state-to-state calls from home on Sundays. Remember, on calls the rest of the week you enjoy the great discounts when you spend as little as \$10 on long distance calling a month.

Invoice Continues
On Reverse

MCI Account: 74163
Telephone: 805-123-4567

Statement Date
October 3, 1998



MCI Customer Service: 1-800-462-4663 Page 4 of 5

Long Distance (continued)

Calls from 805-123-4567

Date	Time	Place	Number	Rate	Min	Amount
Sep 17	10:04a	Orville, CA	530-534-0000	Peak	21	2.83
Sep 19	6:03p	Losangeles, CA	323-666-0000	Ofok	1	.09
Sep 20	1:51p	Saratogaspg, NY	518-583-0000	5cent	47	2.35
Sep 20	2:24p	Nassau, NY	518-766-0000	5cent	31	1.55
Sep 21	11:41a	Hernet Anza, CA	909-763-0000	Peak	3	.42
Sep 22	8:48a	Redondo, CA	310-375-0000	Peak	1	.14
Sep 22	8:49a	Beaverton, OR	503-671-0000	Peak	2	.54
Sep 23	10:45am	Orville, CA	530-534-0000	Peak	1	.13
Sep 24	8:57a	Hernet Anza, CA	909-763-0000	Peak	1	.14
Sep 24	9:23a	Oxnard, CA	805-485-0000	Peak	2	.28
Sep 27	1:32p	Saratogaspr, NY	518-583-0000	5cent	91	4.55
Sep 28	9:27a	Summit, NJ	908-277-0000	Peak	15	4.12
Sep 28	11:16a	Monrovia, CA	626-358-0000	Peak	1	.13
Sep 29	10:58a	Monrovia, CA	626-358-0000	Peak	1	.13
Sep 30	1:48p	Pasadena, CA	626-444-0000	Peak	26	3.70
Sep 30	10:58a	Monrovia, CA	626-357-5211	Peak	4	.57
Sep 30	5:59p	Nassau, NY	518-766-3256	Peak	14	3.84
Total Calls from 805-684-1234						\$48.45

Total Long Distance \$48.45

Taxes and Surcharges

Local Service

Network Access-Interstate Calling (\$3.50/line/mo).....	\$3.50
CA 911.....	\$.15
CA Teleconnect Fund.....	\$.01
CA High Cost Fund-B Surcharge.....	\$.47
CA Universal Lifeline Tel Serv Surcharge.....	\$.39
CA Relay Service and Commun Devices Fund.....	\$.04
Federal Excise Tax.....	\$.62
State and Local Surcharge.....	\$.02

Long Distance Service

CA 911.....	\$.18
CA Teleconnect Fund.....	\$.01
CA High Cost FUnd - B Surcharge.....	\$.67
CA Universal Lifeline Tel Serv Surcharge.....	\$.56
CA Relay Service and Commun Devices Fund.....	\$.06
Federal Excise Tax.....	\$1.57
Federal, State & Local Surcharges.....	\$.16
National Access Fee.....	\$1.07
Federal Universal Service Fee.....	\$1.31

Total Taxes and Surcharges \$10.79

Invoice Continues

Itemized long distance bill showing date of call, time of call, city called, number called, rate category of call, duration of call, and amount charged for call.

Itemized taxes, surcharges, and fees by service category.

MCI Account: 74163
Telephone: 805-123-4567

Statement Date
October 3, 1998



MCI Customer Service: 1-800-462-4663 Page 5 of 5

MCI Savings

Friends & Family Discount.....	\$2.27
Total MCI Savings This Month	\$2.27

Amount this customer saved under selected discount plan compared to basic rates.

Key to Rate Codes:

Peak=Call priced at Peak rate
Ofpk=Call priced at Off Peak rate
5cent=5-cent Sunday Call

Description of rate categories

For Your Information...

A change in the 619 area codes will start soon. Area code 858 will begin permissive Dialing on 6/12/99 and will be mandatory starting on 12/11/99 through 3/11/00. The following NXX codes will be included in area code 858: 207, 259, 268, 270, 271, 272, 273, 274, 277, 278, 279, 292, 319, 314, 326, 350, 352, 380, 397, 404, 410, 432, 450, 421, 452, 453, 454, 455, 456, 457, 458, 459, 467, 480, 481, 483, 484, 485, 486, 487, 488. The new area code 935 will begin permissive dialing on 6/10/00 and will be mandatory starting 12/9/00 through 3/1/01. The following NXX codes will be included in area code 935: 205, 210, 212, 213, 215, 216, 219, 145, 256, 258, 267, 303, 313, 315, 319, 334, 336, 365, 390, 401, 4022, 403, 407, 409, 415, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 499, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 447, 448, 449, 460, 461, 462, 463, 464, 465, 466, 468, 469, 470, 472, 473, 474, 475, 476, 477, 478, 479, 482, 489, 498, 506, 51, 522, 545, 561, 562, 575, 579, 585, 588, 589, 590, 593, 596, 628, 644, 656, 659, 660, 661, 662, 667, 668, 669, 670, 671, 690, 691, 697, 698, 722, 734, 740, 741, 747, 749, 753, 766, 791, 941, 644.

Special category mandated for state messages.

End of Invoice
Thank You for Choosing MCI

MCI WorldCom direct-remit bills also contain information explaining how to pay bills, and information on select programs (such as MCI WorldCom's popular "5 Cent Sundays," including information showing customer-specific savings comparing rates under the selected MCI WorldCom program versus basic rates). MCI also, from time to time, provides invoice messages to its customers to inform customers why changes in their bills are occurring and how they may be impacted.

As is illustrated on the sample bill, our direct remit bills also contain regulatory messages required by state commissions that are aimed at educating customers about regulatory actions that impact the way customers use telecommunications services (for example, MCI WorldCom's discussion regarding changes in the 619 area codes). Also, because MCI WorldCom believes it is important to inform its customers of significant changes and programs that impact calling patterns and cost, our direct remit bills contain explanations of rate changes when necessary. For example, as is illustrated in the sample bill (above), in MCI WorldCom's January direct-remit bill we offered a clear explanation of the new charge labeled Federal Universal Service Fee.

Thus, while MCI WorldCom clearly incorporates into its direct-remit bills features to ensure that customer communications are clear, accurate and easily understandable, MCI WorldCom does not believe that the Commission should mandate a specific billing organization, or regulations restricting communications between a carrier and its customers. Rather, to ensure that carriers' bills are clear and easily understandable, carriers should be encouraged to follow general guidelines, outlined below.

MCI WorldCom's research and experience has found that these guidelines can be

summarized as follows:

Consumer Bills Should Be Clear and Easy to Understand

- The name of the carrier providing service should be clearly printed on the bill.
- Bills should be printed in a readable size and style;
- Regulated services (such as basic telephone service) should be separated and distinguished from non-regulated services (such as Internet service);
- Toll free customer service number(s) or, as appropriate, the online address (URL) for customer service of the carrier providing service should be provided and staffed to handle customer inquiries regarding billing issues.

Billing Practice and Procedures Should Promote Consumer Understanding

- Customers are entitled to be billed in accordance with legally tariffed rates, terms, and conditions;
- Customers are entitled to notice consistent with FCC regulations;
- Carriers providing billing services to other carriers should be required to permit appropriate notice, as requested by the service provider, of changes in rates, terms, conditions;
- Bills should be sent by customers within a reasonable period after a service has been rendered.

Additional Billing Requirements That Result from Future Enforcement Processes Should Promote Consumer Welfare

- Future requirements for additional billing detail should not result in customer confusion;
- Cost of complying with future enforcement decisions should not be unduly burdensome;
- Billing requirements that result from future enforcement processes should be

applied in a competitively-neutral manner among carriers competing within a market (e.g., all IXCs) and in related markets (e.g., IXCs and ILECs).

These guidelines would establish general principles that carriers should incorporate into their billing practices, and would preserve the flexibility carriers require to manage costs and to differentiate themselves from competitors.

B. The Commission Should Ensure that ILEC Billing on Behalf of Long Distance Providers Protects Consumers' Rights to Clear and Understandable Bills

In the current environment, MCI WorldCom bills the vast majority of its mass market customers via a single bill sent by the ILECs. The relationship of MCI WorldCom and the ILECs is a contractual one; however, Commission intervention into these contractual relationships via rulemaking is essential to ensure that customers receive the information they want and need.

Currently, the ILECs dictate the formatting of customer bills. MCI WorldCom does have some control over the dial 1 portion of invoices, and paid large amounts of money to the ILECs to develop software to permit it to transmit dial 1 billing information to the ILECs in a manner MCI WorldCom believes to be easily understandable by its customers. However, this "control" is somewhat illusory. The ILECs have total control over the casual billing portion of invoices, maintain control over how the bill as a whole is formatted (for example, controlling page size and type) and strip away much of the paid and contracted for ability to communicate with

customers in the dial 1 portion.¹³

The primary means of communication with customers is via invoice messaging or bill inserts. ILECs reserve to themselves the right to determine not only the number and length, but the content, of invoice messages and bill inserts. (Indeed, some ILECs do not even provide bill insert services to IXCs). Often, a decision whether or not to permit invoice messaging, or in what fashion, is the victim of the ILECs' discretion. MCI WorldCom, which depends heavily on ILEC billing in the mass markets segment, has had its proposed invoice messaging denied by certain ILECs who see themselves as editors of MCI's communications with our end user customers.

For example, in February of 1998, MCI sought to include an invoice message in its ILEC bills that stated:

The 1996 Telecommunications Act laid out a plan to open local phone markets to competition. As part of the implementation of the Act, the FCC ordered local phone companies to reduce the amount of money they charge to all long distance carriers for originating and terminating long distance calls. As a result, MCI has lowered its long distance rates, passing through to its customers more than twice the amount it is saving in these cost reductions. Competition. It works.

¹³ In addition, the time deadlines imposed by ILECs requiring advance approval of invoice messages and bill inserts can result in necessary messaging not appearing on the invoice. Often, last minute information needs to be sent to the customer. While some ILECs do work with IXCs needing flexibility, this is not always the case. Requiring resubmittals of invoice messaging over and over under the premise that it does not meet contractual requirements sometimes means the message is simply not included.

Ameritech and BellSouth, however, declined to print the invoice message. Other ILECs (SWBT and Pactel) requested edits to the message. Other ILECs did print the requested message in our February invoices (or in one case, in March, after haggling over it). With respect to Ameritech's and BellSouth's refusal, MCI was not aware of any technical reasons (e.g., space limitations, missed deadlines) that would have prevented Ameritech or BellSouth from printing this message.

The Commission should use the order in this proceeding, or any policy guidelines it adopts for billing, to make clear that the carrier who provides service can define invoice messaging and labeling, and the carrier who is sending a bill on a contractual basis cannot interfere with messaging or labeling that is otherwise lawful.

C. Casual Billing of Interexchange Carrier Services Is an Area That the Commission Should Regulate

Over 18 months ago, MCI submitted a Petition for Declaratory Ruling seeking a limited rule to govern ILEC behavior when ILECs bill for interexchange carrier "casual" services.¹⁴ Specifically, MCI sought a nondiscrimination rule that would prevent an ILEC from providing discriminatory billing and collection services to interexchange casually billed products when the ILEC was also providing interexchange services. That petition was supported by virtually every competitive player in the industry, many of whom, like MCI, were beginning to experience the difficulties of having to rely on current or future competitors to reach end users with whom we

¹⁴ Petition for Rulemaking, Billing and Collection Services Provided By Local Exchange Carriers for Non-Subscribed Interexchange Services, RM-9108, filed May 19, 1997.

otherwise have no business relationship.

Since that time, the popularity of casually billed products, such as dial around services or 800 services, has increased among consumers. Consumers like and use these products, and competitive carriers are moving to meet the demand. However, our ability to meet this demand continues to hang on the thin reed of being able to "bargain" for billing and collection services with ILECs in a billing environment where the ILEC is the only practical option. As ILECs move to enter the interexchange market themselves, as the Bells will eventually do pursuant to section 271, it is becoming imperative for the Commission to take action on this pending proceeding.

In September 1998, Pilgrim Telephone moved for expedited consideration of MCI WorldCom's petition, prompting another round of comments from competitors seeking a nondiscrimination rule. Pilgrim, and other parties to this proceeding, have reported various ILECs who state they are considering exiting the billing and collections business, refusing to bill for any service other than their own. If this proves true, these services -- which provide consumers with significant additional choices and savings opportunities and which generate billions of minutes of calls -- will evaporate. This cannot be a result that is in the public interest, when the public has spoken so loudly and clearly by its extensive use of these products. The Commission must act promptly to adopt a nondiscrimination rule.

III. Regulation of Billing Practices Should, for Policy and Legal Reasons, Reflect Specifically Identified Problems with Carrier Bills

A. With Billing, as in Most Matters of Telecommunications Policy, the Best Solution Is a Competitive Market with Real and Effective Carrier Choices for Consumers.

As MCI WorldCom has pointed out above, billing is a critical ingredient of the service a customer receives. In a competitive market, misleading or erroneous billing will not be tolerated by a customer, and will not permit a carrier to grow its customer or revenue base. The highly competitive environment in which MCI WorldCom participates requires us to provide clear, truthful billing if we are to attract and retain customers. Customers who don't like a carrier's billing, rates, services, etc., can and do simply choose another carrier. Competition, not regulation, is the best answer.

Unfortunately, there are a few carriers who are interested in the short term benefits to be gained by misleading or taking advantage of customers in a purposeful way. These are the minority of carriers who tend to generate the most significant complaints. For these carriers, the Commission's enforcement powers should be utilized to stop activity that results in customer abuses. And as previously discussed, a set of policy guidelines against which specific behavior can be measured would assist the Commission in its efforts.

B. Commission Has Not Historically Regulated Retail Billing and Collections Practices of Carriers Generally

With few exceptions, the Commission has not regulated the retail billing and collections practices of carriers generally. In its Notice, the Commission reaches to the Telephone

Disclosure and Dispute Resolution Act (TDDRA) to find a case in which it has been specifically authorized to regulate billing -- and this, in the "pay per call" environment. The Commission then cites its general Title II authority over common carrier services, and the provisions of section 201(b), which require just and reasonable charges, practices, and classifications.¹⁵

The absence of Commission experience with regulation of billing is particularly telling with respect to the interexchange market. When new entrants such as MCI WorldCom began to offer long distance service in the 1970s and early 1980s, the Commission declared this group of carriers nondominant and declined to exercise the full scope of regulatory jurisdiction over them.¹⁶ The doctrine of nondominance was a regulatory recognition that these new players could

¹⁵ The Commission currently possesses the necessary powers to enforce the consumer protection obligations of common carriers. Under section 201(b) of the Act, common carriers are prohibited from engaging in unjust and unreasonable practices in the provision of telephone service. 47 U.S.C. § 201(b). Further, the Commission has stated that it can address any illegal carrier conduct "through the exercise of [its] authority to investigate and adjudicate under section 208." See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order, 11 FCC Rcd. 20730 (1996) at 20743. Moreover, the Commission may, on its own motion, assess a forfeiture against any person found to have willfully or repeatedly violated any provision of the Act or any Commission rule, regulation or order. See 47 U.S.C. § 503(b); see also 47 C.F.R. 1.80. The Commission also has the authority to commence any proceeding within its jurisdiction by serving upon any common carrier an order to show cause. 47 C.F.R. 1.701(a).

¹⁶ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking (Notice), 77 FCC 2d 308 (1979); First Report and Order (First Report), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Second Report and Order (Second Report), 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Third Report and Order (Third Report), 48 Fed. Reg. 46791 (1983); Fourth Report and Order (Fourth Report), 95 FCC 2d 554 (1983), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed

not exercise market power over any portion of the long distance market, and that regulation of their practices and prices was not necessary. These carriers were, however, subject to the Commission's complaint processes, and their conduct, if challenged, was measured against the statutory requirements of Title II of the Communications Act as opposed to many of the specific Commission-mandated rules reserved for dominant carriers. It is an understatement to say that in the two decades since that time, the topic of interexchange carrier bills -- their clarity or any confusion they engender on the part of customers -- has not emerged as a leading issue in the enforcement arena.¹⁷

There has been one substantial exception to the general absence of the Commission from the billing and collections arena -- the problem of incumbent local exchange carrier (ILEC) billing on behalf of unaffiliated interexchange carriers. At the time of the AT&T divestiture, AT&T (as well as many new interexchange carriers) relied on ILEC billing of its services. In fact, a section of the interstate access charge tariffs was specifically devoted to the charges, terms and conditions to govern ILECs when they billed end users on behalf of interexchange carriers. In 1986, the Commission de-tariffed ILEC billing and collections, finding that these

Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984); Sixth Report and Order (Sixth Report), 99 FCC 2d 1020 (1985), vacated sub nom., MCI Telecommunications Corp. v FCC, 765 F.2d 1186 (D.C. Cir. 1985).

¹⁷ One of the few lines of cases that has developed over the years is the Commission's regulation of the practice of backbilling, in which the Commission has made pronouncements on the reasonableness of a carrier sending out a bill for a past period. See In the Matter of the People's Network Incorporated, Complainant, v. American Telephone and Telegraph Company, Defendant., File No. E-92-99, 12 FCC Rcd 21081, April 10, 1997.

arrangements could be made through carrier-to-carrier contracts.¹⁸ The Commission specifically found that billing and collection was a function that, in its view, would become competitively-provisioned, and there was no longer a need to utilize the full breadth of its Title II powers to regulate ILEC charges and practices. As MCI WorldCom has argued in a separate Petition for Rulemaking, the predicted competitive environment has not emerged to replace ILEC billing and collection, and the future evolution of the Bell companies as direct competitors in the interexchange market threatens the ability of carriers to rely on ILEC billing for casually-billed calling services.¹⁹

Any review of Commission involvement in interexchange retail billing and collections practices leads to the conclusion that the Commission is now seeking to regulate an area which has largely been unregulated over the past two decades. With all of the deregulatory fervor that has occupied the regulated industries since the early 1980s, and the bipartisan support of competitive markets as a better “regulator” of markets than government agencies, one would expect that there would be Congressional or Court-provided guidance on what agencies should do when seeking to occupy a previously-unoccupied field. Surprisingly, there is little specific guidance. As discussed, below, MCI WorldCom suggests that the legal standard that the

¹⁸ Detariffing of Billing and Collection Services, 102 FCC2d 1150 (1986). While ILEC billing and collections were removed from interstate access tariffs, they remained subject to the Commission’s Title I and Title II jurisdiction.

¹⁹In the Matter of MCI Telecommunications Corporation, Billing and Collection Services Provided By Local Exchange Carriers for Non-Subscribed Interexchange Services, Petition for Rulemaking, RM-9108, filed May 1997, at 5-11.

Commission ought to follow, is that any regulation it seeks to introduce must be rationally related, and narrowly tailored, to an identified problem.

C. New Regulations of Carrier Billing and Collection Practices Must Be Rationally Related, and Narrowly Tailored, to Specific Problems Identified

The legal standards that the Commission must meet in order to promulgate new regulations over an area where it has previously not regulated are governed by the prohibitions against arbitrary and capricious agency action, or abuse of discretion, that exist in the Administrative Procedures Act. An agency action may be arbitrary and capricious if it:

- relies on factors which Congress did not intend for it to consider;
- entirely fails to consider an important aspect of the problem;
- offers an explanation that contradicts evidence before it; or
- is implausible.²⁰

Moreover, the agency must consider plausible alternatives. An artificial narrowing of options may make the final rule arbitrary.²¹ Of course, as Congress has required, the agency must pay particular attention to the cost and benefits of its proposed regulations.

²⁰ Motor Vehicle Manufacturers Ass'n of U.S., Inc. V. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 44 (1983).

²¹ Mt. Diablo Hospital v. Shalala, 3 F.3rd 1226, 1232 (9th Cir. 1993).

Courts have recognized limits to agency action where, as here, an agency is proceeding on the strength of general authority (e.g., section 201(b)) in lieu of an express delegation (e.g., section 228's pay-per-call requirements). For example, in Central Forwarding, Inc. v. Interstate Commerce Commission, 698 F.2d 1266 (5th Cir. 1983), the court found regulations governing fuel cost reimbursements to exceed the general authority granted the Interstate Commerce Commission. The court evaluated three factors in reaching its determination: (1) how broadly Congress had granted rulemaking authority to the agency; (2) how closely related to specific delegations of power was the regulation in question; (3) how dramatically the regulation would affect the private parties at which it was aimed.²²

These cases suggest that limits exist to the Commission's discretion in adopting regulations over billing and collection for the first time. In MCI WorldCom's view, there are several requirements that the Commission must meet in order to exercise its jurisdiction. First, there must be a specific finding of market failure -- supported by evidence of such failure. In the billing and collections context, there must be evidence that carrier bills -- as opposed to carrier charges or practices -- require an exercise of Commission authority. Second, as the Notice recognizes, the Commission must carefully consider the costs and benefits of its proposed regulation. This is particularly important as the Commission surveys the competitive landscape

²² Central Forwarding, 698 F.2d at 1278. See also Global Van Lines v. Interstate Commerce Commission, 714 F.2d 1290 (5th Cir. 1983)(ICC lacked authority to extend certain rules to freight forwarders); Interstate Commerce Commission v. American Trucking Association, Inc., 467 U.S. 364 (1984)(ICC lacks general authority to nullify tariffs retroactively).

of the interexchange, wireless, and exchange market that it has created, with thousands of carriers whose billing and collection practices have grown up in an essentially de-regulated environment.

Third, whatever rulemaking action is taken, it must be narrowly tailored to fix the identified problem. Wide-ranging proscriptive requirements should not be imposed where the exercise of adjudicatory powers against a few bad actors will substantially correct a problem.

Rules that are disconnected from the evidence cannot stand.

D. Commission Is on Strongest Legal Footing in Developing a Policy Statement and Guidelines for Retail Billing, While Using Adjudicatory Enforcement Powers to Pursue Carriers Who Abuse the Public Interest; Carrier Billing on Behalf of Other Carriers Requires Additional Commission Involvement

As the remainder of these comments suggest, MCI WorldCom believes that in the retail relationship that carriers have with customers, the competitive market requires that carriers interested in fostering long-term relationships with customers, in growing their market share, and in succeeding in the market, have the strongest incentive to produce bills that are clear, accurate, fair, not misleading, and that promote a beneficial relationship with the customer. Because billing is the most significant way a carrier communicates with its customer, a carrier seeking to retain and grow customer revenues through the sales of additional services will produce bills that customers understand. Most carriers that the Commission regulates have such an incentive.

In addition, MCI WorldCom believes that for the bulk of the industry, there are few sustained problems with retail bills. While regulators have expressed some concern with respect to the introduction of line charges in the wake of universal service reform, or interstate access

reform, these changes were driven by one-time changes in underlying regulatory costs that the Commission itself mandated, and are unlikely to produce on-going regulatory activity with respect to billing inquiries.

It is MCI WorldCom's view that the Commission is therefore on its strongest legal footing in this proceeding if it adheres to its proposal to adopt policy guidelines to govern carrier practices in governing retail billing, while utilizing its Title II enforcement powers to proceed against those carriers who appear to ignore the policy guidelines or otherwise abuse customers for their own short-term benefit. Policy guidelines, unlike rules, suggest behavioral norms that carriers should follow. They may -- or may not be -- adopted as rules. For example, in its Private Line Rate Guidelines decision, the Commission adopted policy guidelines into its Part 61 rules that suggest how carriers should tariff private line rates.²³ In its Forfeiture Guidelines decision, the Commission elected not to codify policy guidelines that were intended to provide a measure of predictability to the process and uniformity to their administrative sanctions, while retaining flexibility for the Commission to act appropriately in particular cases.²⁴

In any case, failure to adhere to a policy statement or guidelines is not the same as violating a specific Commission prescription or prohibition contained in a rule. While a policy

²³ 47 C.F.R. 61.40 See also In the Matter of Private Line Rate Structure and Volume Discount Practices, CC Docket No. 79-246, 97 FCC 2d 923, adopted April 11, 1984.

²⁴ In the Matter of The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, CI Docket No. 95-6, 12 FCC Rcd 17087; released July 28, 1997, at ¶8.

statement suggests behavior that would be viewed as a "safe harbor," failure to adhere to policy statements may be explained by the carrier as being impossible, burdensome, or unnecessary to adhere to Title II requirements on the facts of the specific case. However, a policy statement, like specific rules prohibiting or requiring certain action, provides the same ability for the Commission to initiate an inquiry into the carrier's practices to determine if the carrier has failed to meet its Title II obligations. And, a policy statement, like specific rules, informs the agency's enforcement actions when acting on customer complaints. In sum, policy guidelines provide all the ammunition the Commission needs to address any perceived instance of a problem with a specific carrier's bills.

The legal posture of the Commission should be different, however, with respect to ILEC billing of unaffiliated interexchange carrier services, and in particular, casually billed calls. MCI WorldCom's Petition for Rulemaking has called to the Commission's attention a specific, emerging problem of market failure that has been experienced by all of the competitive carriers who supported the petition. Consumer demand for products like MCI WorldCom's "10-10-321" or "1-800-Collect," to name a few, has required unaffiliated interexchange carriers to rely increasingly on ILEC billing. These are products in which the interexchange customer has no ongoing relationship with the underlying interexchange carrier, -- the relationship extends only to the call provided. While these products have demonstrated value in the marketplace -- particularly among low-income consumers -- the rate schedules that have helped drive their popularity are threatened by ILEC billing costs that will force rates up substantially. In the

absence of Commission protection of this billing functionality, carriers will be driven to an inevitably unacceptable choice: either rate rates substantially to cover the costs of direct collection of these non-presubscribed charges, or discontinue these services altogether. In this environment, the Commission can and should assert its rulemaking authority to adopt a structural rule requiring ILECs not to discriminate in the provision of billing for casual calling services. This limited exercise of jurisdiction will ensure that, as ILECs enter and expand activities in the interexchange market, unaffiliated carriers can continue to provide casually called products that consumers value.²⁵

E. Future Commission Enforcement Decisions Must Preempt Inconsistent State Law Requirements

As the Notice text indicates, decisions by the Commission to assert jurisdiction over carrier bills may raise issues with respect to state law requirements -- state statutes, state regulations, court orders, or consent decrees. As an initial matter, so long as the Commission pursues its proposed course of adopting policy guidelines -- instead of prescriptive or proscriptive rules -- the adoption of guidelines should not raise issues of whether state or federal law take precedence.

Future enforcement action, however, may raise preemption issues if there exist on the

²⁵ In the Matter of MCI Telecommunications Corporation, Billing and Collection Services Provided By Local Exchange Carriers for Non-Subscribed Interexchange Services, Petition for Rulemaking, RM-9108, filed May 1997, at 14-15.

facts of a specific case inconsistent state law requirements from those the Commission seeks to impose on the carrier. For that reason, MCI WorldCom believes that, if such inconsistency presents itself, the Commission must be prepared to preempt the state requirement.²⁶

F. Commission Action Must Provide Full Recognition of Carriers' Free Speech Rights, Consistent with Existing Precedent Protecting Commercial Speech.

MCI WorldCom agrees with the analysis in the Notice that there are significant and substantial First Amendment considerations that must be taken into account in seeking to regulate carrier retail billing practices.²⁷ As the Commission recognized, regulations cannot ban truthful, non-misleading commercial speech about a lawful product. Thus, MCI WorldCom agrees that the First Amendment operates as a limitation -- different from the previously-described administrative law limitations -- on the Commission's proposed regulation of billing.

This constitutional limitation provides further reason for the Commission to move to policy guidelines as opposed to proscriptive rules. The Commission cannot ban truthful, non-misleading labels for services, charges, or fees, and it cannot dictate specific invoice messaging. Carriers are free to communicate with their customers in a truthful, non-misleading way, which includes naming services, charges, or fees, as well as writing invoice messages. The Commission is on far firmer legal ground in suggesting behavioral norms that would be

²⁶ Of course, the Commission must yield its jurisdiction where Congress intends to grant jurisdiction to another agency. 47 U.S.C. Section 228(c)(1), (3)(10).

²⁷ Notice at para. 15.

acceptable than it is in proscribing a specific set of communications that carriers must, or even should, use.

As previously discussed with respect to ILEC billing on behalf of interexchange carriers, however, the Commission should take advantage of the opportunity presented by this proceeding, to clarify that commercial free speech rights extend to invoice messaging, and service and fee labeling, in circumstances where a carrier has undertaken a contractual obligation to issue bills on behalf of another carrier.

IV. Evidence Suggests the Commission Should Adopt Policy Guidelines for Retail Bills

As described in the preceding section, action by the Commission in this docket must be rationally related, and narrowly tailored, to the specific issues identified with carrier billing. This should be of particular concern in the instant case where the agency is proposing to assert its jurisdiction over a previously unregulated area. In MCI WorldCom's view, the Commission must identify and describe the market failure problem that it seeks to address. Based on MCI WorldCom's retail billing experience, which now accounts for approximately 25 percent of the interexchange market, there is no factual support or consumer demand for prescriptive or proscriptive regulatory requirements.

MCI WorldCom notes that the evidence that would support the fullest exercise of Commission authority (i.e., prescriptive or proscriptive regulations) is lacking in the Notice. The Notice does contain anecdotal information about individual carriers who have vague nomenclature associated with various charges, and asserts without support that complaints

“directly or indirectly arising” from bills are on the increase. The Notice appears to take the view that any undesirable carrier practice, such as cramming, is in reality a problem of unclear or misleading bills. The connection, however, is far from clear in all cases. In the interexchange arena, MCI WorldCom’s customers have been converted without authorization to carriers who identify themselves clearly on their bills -- and to carriers who do not. To take the position that all undesirable practices amount to a reason to regulate billing is not the “rational relationship” that MCI WorldCom believes is required as a matter of law.

MCI WorldCom has examined the informal complaints served on us by the Commission over the past two years, as well as complaint activity that we receive directly from customers through customer relations vehicles (e.g., customer service representatives, account teams, etc.). Based on our review of these statistics, customer confusion over billing is not a significant problem. For example, in 1997, only 2.25 percent of informal complaints MCI received were related to customer billing confusion. The largest subgroup, over half (1.25%), were confused over minimum usage fees. In 1998, less than 10 percent of informal complaints stemmed from customer confusion over bills. Of that segment, 80 percent stem from the new National Access Fee charge, and 16 percent from the Federal Universal Service Charge. Nearly half of the National Access Fee complaints were regarding MCI WorldCom's small business National Access Fee. Additionally, of the millions of customer service calls MCI receives every month, as of May 1, 1998, only 224 calls received were not satisfied with the billing and customer service explanations of the National Access Fee, 182 calls from large business customers, and 42 calls from residential customer.

For both the National Access Fee and Federal Universal Service, MCI WorldCom's ability to inform customers in advance was limited by Commission inaction. In both cases, Commission delays in finalizing implementation issues and rate levels made it impossible for MCI WorldCom to educate customers about the new fees in advance of their billing statements.²⁸ In the case of the small business National Access Fee, illustrating just how effective the market forces are in the long distance industry, MCI WorldCom quickly modified the structure of its fee as a result of customer communications with the company.

The evidence MCI has gathered over the past two years, combined with information on the record in the instant proceeding does not support creation of a new set of regulatory requirements -- in the form of rules -- that limit industry flexibility. MCI WorldCom urges the Commission to refrain from regulating in this area, except in the narrow instances described in our comments.

V. If Regulations Are Necessary, the Commission Is Legally Required to Evaluate the Costs of Such Regulation Relative to the Burden Such Regulation Would Place on Regulated Entities.

As the Commission correctly notes in the Notice, as a matter of law, it is required to assess fully the cost of additional regulations on carriers, then compare the additional costs to the resulting benefits. Based on MCI WorldCom's experience, we estimate that, not only are the

²⁸ MCI WorldCom informed the Commission of our deadlines to develop fee explanations (imposed by the ILECs and by system constraints) months before both the National Access Fee and the Federal Universal Service Fees appeared on customer bills. In both instances, the Commission failed to act prior to the passing of these deadlines, making it impossible for us to educate our customers.

Commission's proposals to regulate billing unwarranted, implementing the Commission's proposals would, at minimum, cost the industry tens of millions of dollars annually. These costs would ultimately be reflected in higher end user rates, possibly drive smaller providers out of the market, and would offer very little customer benefit. As is discussed below, competition, rather than additional regulations, is the most effective mechanism for preserving and promoting consumer welfare.

A. The Commission Should Refrain From Dictating How Carriers Organize Their Bills

In the Notice, the Commission asks if each telephone bill, near the front of the bill, should have a separate page or section that highlights any changes in the consumer's service status information or new charges since the consumer's last bill (called a "Status Changes" page). Based on our customer research and over 30 years of experience, we have found that our customers prefer the following information on the first page of the bill: customer account information, a customer service toll free number, name of telephone provider, amount of previous charges due, amount of payments received, outstanding balances, current charges, the amount and the date by which that payment is due, and information on how to pay the bill.

As is demonstrated in the sample direct-remit bill, MCI WorldCom presently takes great efforts to inform customers of changes and new charges that effect the cost and calling patterns of our customers. Examples of our clear messaging is our explanation of the Federal Universal Service Fee and the National Access Fee, messages about new area codes, and information about new promotions such as 5 cent Sundays and MCIOne Savings. The creation of a "Status

Changes" page, as described by the Commission, not only would require carriers to provide information that customers do not currently demand, and therefore needlessly clutter the bill, but would impose millions of dollars of costs on individual carriers that would ultimately be borne by the end user. MCI WorldCom estimates that the addition of a "Status Changes" page would increase our costs by approximately \$15 million annually.²⁹ Additionally, such a requirement would affect the way carriers compete because it would require carriers to share sensitive data with potential or actual competitors who bill on their behalf (*i.e.*, BOCs).

The Commission should not mandate the creation of a "Status Changes" page, or issue rules that dictate how carriers organize their bills. The most effective mechanism for ensuring that bills are organized as demanded by customers is competition. In order of carriers to compete effectively in the market place, carriers must organize their bills in response to customer demands, or risk losing customers.

B. The Commission Should Not Adopt Rules That Limit Carriers' Flexibility to Recover Costs

In the Notice, the Commission also asks if it is misleading or unreasonable, under Section 201 (b) of the Act, for a carrier to bill a consumer for an amount identified as attributable to a particular cost while charging more than the actual cost incurred. The Commission asks whether

²⁹ These additional costs would most likely be incurred by all carriers (IXCs and LECs). Thus, the added cost to the industry of requiring a Status Changes page could easily surpass \$100 million annually.

it would be helpful for consumers if carriers were required to explain in bills their reasons for assessing a flat fee or percentage charge that exceeds the costs the carrier incurs. As MCI WorldCom has explained previously, in competitive markets, such as the long distance industry, carriers that do not explain changes in rate structures, the addition of new fees, and new promotion plans to their customers will not survive in the market place. Carriers that attempt to collect more than is required face losing their customers to alternative providers.

Competitive carriers should be given the flexibility to recover their costs as permitted by the market. For example, while presubscribed interexchange carrier charge (PICC) levels for residential customers are 53 cents and 1.50 for primary and non-primary line customers, respectively, the interexchange industry quickly migrated to an average "per account" charge in its pass through of these costs for several reasons. First, as explained in MCI's Emergency Petition for Prescription, filed February 28, 1998, ILECs have failed to provide IXCs with essential information that allow IXCs to determine whether a customer should be charged a primary or non-primary line PICC. Additionally, in MCI WorldCom's case, a significant portion of our residential customers in a given month do not make long distance phone calls. Due to our reliance on ILEC billing, MCI WorldCom determined that it is not economical to generate bills solely to recover PICC costs, which we incur whether or not the customer makes long distance phone calls. Given these conditions, combined with the competitiveness of the long distance market, MCI WorldCom developed a fair average residential National Access Fee to recover the PICC costs that we incurred as a result of our residential customers.

The residential National Access Fee is \$1.07 per account, regardless of the number or

type of lines. Thus, while a residential customer with only one line may be paying slightly more than the actual PICC charge, customers with two or more lines pay less than the actual PICC charge. These minor market distortions are not the result of IXC profit taking -- MCI WorldCom has previously demonstrated to the Commission that we are not even fully recovering our PICC costs -- but result from the Commission's decision to require IXCs to collect the PICC instead of the ILEC.³⁰

Also, since IXCs are required by law to geographically average their rates, IXCs cannot be required to explain the difference between the cost of every rate element and the rate charged for each service to each customer. Even if that law were changed, the administrative, billing, and competitive costs would be enormous.

Customers and regulators expect carriers to bill in accordance with legally tariffed rates, terms, and conditions. Long distance carriers must be given the flexibility to recover their costs in a competitive market. The market place, combined with existing Commission rules and enforcement powers, adequately protect consumer interests.³¹

³⁰MCI WorldCom developed its Small Business National Access Fee in a similar fashion. There, based on our customer base, we initially determined the fairest recovery mechanism was a fee based as a percentage of the customer's bill. As with residential customers, we had no ability to discern which of our customers was single or multiline, and could not pass through the ILEC charge. After three months, we changed our small business National Access Fee to a flat-rated per line charge that represents yet another approximation of how our customer base incurs PICCs.

³¹ Because the Commission treats USF and PICC as a cost to carriers, when carriers recover that cost they must also consider uncollectibles, billing expenses, administrative expenses, etc., which will vary by carrier. If the Commission wants all carriers to charge the same amount, then they can do so by not making it a carrier cost, and simply require carriers to assess a specific

C. No Single Message Works In Every Situation

In the Notice, the Commission asks if it should prescribe "safe harbor" language that carriers, or some subset of carriers, could use to ensure that they are meeting their obligations to provide truthful and accurate information to subscribers with respect to the recovery of universal service, access, and similar charges. If so, they request comment on what type of information such language should include.

In addition to the First Amendment issues that could be raised,³² there is no need for the Commission to consider taking such action. Competition, not regulation, is the answer. As MCI WorldCom illustrated in its sample direct-remit bill, and through our efforts to include accurate messages in ILEC bills, we take seriously our obligation to provide our customers truthful and accurate information with respect to all charges, including universal service and access charges.

However, even if the Commission erroneously decides to go down this path, it must recognize the limitations of such a strategy. First, for our Business Markets customer base (e.g., large business customers), MCI WorldCom relies almost entirely on customer account teams to communicate information on bill changes. Therefore, such "safe harbor" language would not be applicable, or even usable. Second, for residential and small business customers, where we rely on invoice messages, advertisements, and customer service, no one message can be crafted that

amount on consumers and then remit the amount collected to the Universal Service Administrative Corporation or the ILEC.

³² A truthful non-misleading message that differed -- even substantially -- from "safe harbor" language would have to be permitted.

works in every situation. Every time the Commission acted to change access costs or added fees, it would have to prescribe invoice message language unique to that circumstance, and would have to prescribe "contingent" language in the event a downstream carrier chose to pass a cost through. Finally, every carrier is limited by unique constraints (e.g., contractual, systems, time, etc). For example, if the Commission had issued "safe harbor" language to implement the PICC in January, or for universal service in June, it would have been too late for MCI WorldCom to use it due to ILEC deadlines coupled with the size of our enormous customer base.

If the Commission wants select messages conveyed to end users in the future, and MCI WorldCom opposes this proposal, then it should incorporate the suggestion in a notice related to a particular proceeding, encourage comments on precise recommended language, and then allow ample time for all to incorporate such language into bills.

VI. MCI WorldCom's Line Items Are In Compliance with Section 201(b)

In the Notice, the Commission suggests that line items that recover an identified cost, but which are collected at a rate higher than the cost incurred, may potentially violate Section 201(b). MCI WorldCom is concerned that the Commission may be failing to grasp the total costs downstream carriers face and the problems of collecting costs on a per customer basis in a retail market. We describe those limitations below, and caution that downstream competitive markets, like the interexchange market for PICCs or ILEC USF charges, must be given flexibility for cost recovery.

As MCI WorldCom previously explained in section VB infra, MCI WorldCom's National

Access Fee is just and reasonable, and in compliance with Section 201(b) of the Communications Act. MCI WorldCom developed the National Fee to recover its PICC costs in the competitive long distance retail marketplace, despite the ILECs decision to withhold essential information from the IXCs that the Commission required them to provide.³³ As for MCI WorldCom's Federal Universal Service Fee, in the Universal Service Order,³⁴ the Commission stated that carriers can recover their contributions to federal universal service support through rates on interstate services only. Further, the Commission stated that carriers are "permitted... to pass through their contributions to their interstate access and interexchange customers."³⁵ Although the Commission declined to create a single interstate fee that would be paid by basic residential dialtone subscribers, carriers were not precluded from creating such a fee to be assessed to their customers. Rather, the Commission left it to each carrier to determine how it would recover federal universal service costs.

As a result of implementation of the Commission's Access Reform and Universal Service orders, MCI and other long distance carriers are facing significant changes in the form of lower

³³ For example, even though the Commission specifically required ILECs to provide IXCs essential PICC cost information, such as class of customer information (i.e., whether a residential customer's line is a primary or non-primary residential line, or whether a business line is single- or multi-line, or centrex), and to provide this and related information in a usable, auditable format, many of the largest ILECs refused. To date, nearly one year later, many ILECs still are not providing this information as required.

³⁴ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 12 FCC Rcd 8776, adopted May 7, 1997.

³⁵ Universal Service Order at para. 829.

per minute switched access charges, a flat per customer line charge that we pay to the ILEC, and universal costs that come to us in two ways: (1) directly from the universal service fund administrator and (2) through the universal service obligations of the ILECs that are passed through entirely to the long distance industry. MCI WorldCom, along with many other IXCs, has chosen to modify its rate structure to reflect the significant changes in its cost structure. Beginning January 1, 1998, MCI WorldCom began recovering the new flat-rated PICC through a flat-rated charge called a National Access Fee. Also, beginning July 1, 1998, MCI WorldCom introduced the residential Federal Universal Service Fee to recover our universal service costs.³⁶ These new fees, combined with lower per minute rates that MCI WorldCom began charging months before access reform was even implemented (i.e., "5 Cent Sundays" beginning in early fall 1997), have resulted in significant bottom-line savings for our customers. Stated differently, our per minute rates are dropping further and faster than access and universal service costs.

In the Notice, the Commission notes that long distance access costs have decreased by \$2 billion since 1996, and asks whether long distance carriers that include a separate line item for the recovery of universal service contributions and/or access costs should be required to explain the net reduction in their cost of providing long distance service since enactment of the Act. The Commission also asks whether carriers who assess fees to recover access charges (i.e., the presubscribed interexchange carrier charge (PICC)) and/or universal service costs should be required to show whether the corresponding reduction in per-minute rates are actually passed on

³⁶ The Business and Small business Federal Universal Service Fee was introduced January 1, 1998.

to that individual consumer.

First, as is pointed out above, it cannot be doubted that the interexchange industry is vibrantly competitive. Literally hundreds of long distance companies compete in the interexchange market, and tens of millions of customers change their long distance provider annually. Moreover, as the Commission has found, not even AT&T, the largest IXC, exercises market power in the interexchange market.³⁷ The undeniable fact is, market forces in the long distance industry ensure that IXCs reduce rates when costs go down. Therefore, the Commission should not even contemplate requiring long distance carriers who assess fees to recover the access and/or universal service costs to show whether the corresponding reduction in per-minute rates are actually passed on to that consumer. Competition in the long distance industry protects the consumer.

Second, while it is true that decisions about how to charge our customers to recover these costs are ours and ours alone, we have already taken great efforts to ensure that both our customers and regulators understand that our new rate structure (lower per minute charges coupled with fees intended to recover new costs that we incur) is just and reasonable, and in no way over-recover the same costs. On March 2, 1998, in response to a letter received from Chairman Kennard, MCI clearly and publicly demonstrated that allegations that we are profiting

³⁷ In the Matter of Motion of AT&T Corp. To Be Reclassified as Nondominant Carrier, Order, 11 FCC Rcd 3271, 1995.

from implementation of the new access reform structure are completely false.³⁸ MCI proved that our long distance rates have dropped further and faster than access reductions over the same time period. Specifically, MCI demonstrated in that letter that:

- One year after the release of the Commissions' May 7, 1998 access reform orders, MCI customers received more in savings than the Commission itself predicted when the Access Reform and Price Cap orders were released;
- MCI has passed along all access charge savings resulting from the May 7 orders (\$756 million) -- and an additional \$467 million in savings to boot. Not only have our rates fallen faster than access reductions, they had fallen in advance of access reductions;
- Both residential consumers and business customers have benefited from the pass-through of access charge savings; and

The creation of the PICCs, which shift some per minute access charges to per-line fees, and the universal service charges impose real costs in 1998 on MCI in excess of the access savings.

The facts submitted by MCI WorldCom in that letter, as well as by other large IXCs such as AT&T and Sprint, are supported by independent Wall Street analyses that clearly demonstrate that long distance prices are falling faster than any reductions in access charges. For example, in an October 2, 1998 report, Goldman Sachs shows that average long distance revenue per minute declined from the third quarter of 1997 through the second quarter of 1998. Wall Street analysts have also taken note that "MCI posted a negative revenue to volume gap of 5.4% roughly in line with our expectations and wider than the negative 3.7% gap in 4Q97. The wider gap is primarily

³⁸ See Letter from Jonathan B. Sallet, Chief Policy Counsel, MCI Communications Corporation to William Kennard, Chairman, Federal Communications Commission on March 2, 1998.

as a result of access charge pass throughs and strong demand for MCI's five cent Sunday program."³⁹

Nevertheless, in an effort to deter the Commission from reforming interstate access charges that presently remain \$10 billion above forward-looking economic cost, ILECs (and USTA) continue to allege falsely that IXCs are profiting from access reform. MCI WorldCom, in the attached letter to the Commission from Michael Pelcovits, Chief Economist, MCI WorldCom, demonstrates that the two reports that USTA recently introduced into the access reform record, which purport to document IXC exercise of market power, are not only replete with errors but are simply incorrect.⁴⁰ MCI WorldCom has clearly demonstrated through facts, supported by independent Wall Street analysis, that competitive forces in the long distance industry have forced long distance rates of IXCs, such as MCI WorldCom, to fall in excess of cost reductions resulting from the Commission's access reform policies.

The Commission should also refrain from requiring carriers who assess fees to recover access charges and/or universal service costs from showing whether the corresponding reduction in per-minute rates are actually passed on to that individual consumer because such a requirement would be virtually impossible, and extremely costly, to implement. MCI WorldCom, as are other IXCs, is required by law to charge geographically averaged rates, meaning that our rates are

³⁹ Linda Meltzer, UBS Securities, Report of 5/1/98.

⁴⁰ See attached letter from Michael D. Pelcovits, Ph.D, Chief Economist, MCI WorldCom to The Honorable William E. Kennard, Chairman, Federal Communications Commission, October 26, 1998. The letter also explains that there is no economic theory that would even support theories proffered by the IXCs in this debate.

the same throughout the United States even though our costs vary significantly throughout the country. This means that, because we are prevented from charging customer-specific, or region specific rates, we cannot guarantee that a specific customer will receive changes in long distance rates that match the changes in that customer's local exchange carrier's access charges. In fact, as is already the case since only price cap carriers have been required to restructure access charges, customers served by non-price cap ILECs are currently receiving lower long distance rates even though their ILEC has not lowered, or possibly has even increased, their access charges.

Even if the law were changed to permit geographically de-averaged long distance rates, the cost of implementing such a requirement would be prohibitive. The tens of millions of dollars that the industry would be required to invest in necessary equipment would ultimately impact the cost of long distance service paid by end users -- with little offsetting benefit. The most economical and effective manner to ensure that customers are not paying artificially inflated long distance rates is through competition. The long distance market is currently extremely competitive. That is why carriers, such as MCI WorldCom, continue to lower long distance rates faster and further than reductions in their access costs.⁴¹

In MCI WorldCom's view, if the Commission elects the path of onerous and unnecessary regulation of pass through charges, then it should simultaneously require the upstream dominant carriers to provide clear and accurate information to end users about ILEC practices. The

⁴¹ If the Commission believes more customer education is needed to explain rate regulation and access charges than is currently being provided by carriers, then the Commission can release alerts and provide other educational material.

Commission should require ILECs to inform their customers that approximately 40% of long distance revenue is paid directly to incumbent local exchange carriers in access charges, to originate and terminate long distance calls. This added information is just as important for consumers to know as the source of a line charge.

VII. Conclusion

Due to the vibrant competition in the long distance market, carriers such as MCI WorldCom devote constant attention to billing and other consumer communication. As in most matters of telecommunications policy, the optimal solution is a competitive market with real and effective carrier choices to ensure that carrier billing is clearly and easily understandable. Based on MCI WorldCom's research and experience, customer confusion of long distance carriers' bills is not an issue that warrants Commission regulation in this area.

If, however, based on factual evidence, the Commission determines that significant customer confusion of long distance or industry bills exists, the Commission should adopt in this proceeding a set of guidelines -- drawing on the presentation of the MCI WorldCom direct remit bills -- that carriers can incorporate into their bills. In MCI WorldCom's view, competitive markets create the best assurance of consumer friendly billing practices because poor or confusing bills will reduce demand for a carrier's services. Of course, an individual carrier seeking short-term gain by issuing erroneous or confusing bills should remain subject to Commission enforcement action.

Guidelines are the most effective means to achieve the Commission's goal -- that customers receive clear and understandable bills -- without imposing regulations that would increase individual carrier's cost by tens of millions of dollars annually, and that ultimately would be borne by end users in the form of higher rates. Guidelines would allow the Commission to initiate enforcement activity, and would provide policy guidance to the Commission in adjudicating customer complaints. This approach also rests on firm legal ground as the Commission prepares to regulate in an area that has not previously been subject to Commission regulation.

MCI WorldCom also advocates that, for areas in which competition has not yet developed, such as ILEC billing on behalf of unaffiliated carriers, the Commission should delineate prescriptive rules that ensure that carriers relying on these billing "bottlenecks" can effectively, and clearly, communicate with their customers, and that unaffiliated entities are protected from potential discrimination. These rules are essential because competitive forces

Comments of MCI WorldCom, Inc.
November 13, 1998

have not yet developed to provide billing alternatives for long distance companies, especially in cases where the interexchange carrier has no other business relationships with the end user (e.g., casual calling). These rules must include language that clarifies that ILECs are required to bill for "casual services" on a nondiscriminatory basis.

Respectfully submitted,
MCI WORLDCOM, Inc.



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November 13, 1998



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Michael D. Pelcovits
Chief Economist

October 26, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814, SC 0101
Washington, D.C. 20554

Re: USTA Economic Analysis of Long Distance Rates

Dear Chairman Kennard:

Last week, USTA issued two economic reports critical of the long distance industry and submitted them with a letter to you dated October 21, 1998. USTA accuses the major IXCs of failing to pass through access charge reductions to their residential customers. Based on their analysis of the long distance bills of a sample of residential customers, USTA and its consultants claim that residential rates increased between 5.1 and 9.5 percent between late 1997 and April 1998 and by another 4.9 to 10.2 percent between July 1, 1998 and the present. (The second study, upon which I will not comment, attacks an audit conducted of AT&T's rates.) USTA argues that the "incontrovertible" evidence of the IXCs' failure to pass through access reductions eliminates any reason for the Commission to order further access charge reductions.

In light of the timing of the USTA release one week prior to the submission of comments to the Commission on access charge reform, I will respond to claims made by USTA and its "independent" consultants (who have been working for the local telephone monopolies for decades) and show their obvious absurdity. Later, when we have had the opportunity to analyze the data set underlying the study, we will submit a more detailed critique.

Wall Street Numbers Contradict USTA's Assertions

An obvious independent source of data on long distance company prices is Wall Street. In a report dated October 2, 1998, Goldman Sachs estimates changes in minutes and revenue for the four largest long distance carriers, and then calculates the "gap" between the two growth rates (revenue growth minus minutes growth). The gap, which is reported directly in the Goldman Sachs analysis, provides an excellent independent estimate of the change in the carriers' revenue per minute over the time period studied in the NERA report. If the gap is a negative number, then average revenue per minute must be declining since revenues are growing slower than minutes. The table below shows the

long distance carriers' gap for each of the last four quarters – measured on a year-over-year basis:

	3Q97	4Q97	1Q98	2Q98
AT&T	-10.5%	-9.5%	-5.6%	-5.6%
MCI WorldCom	-10.0%	-7.9%	-9.7%	-7.8%
Sprint	-5.5%	-5.1%	-1.8%	-4.1%
Qwest/LCI	-10.0%	-1.9%	-2.3%	-6.9%

Source: "Telecom Services: Third Quarter Preview," Goldman Sachs Investment Research, October 2, 1998.

The Goldman Sachs gap estimates and the USTA/NERA revenue per minute estimates seem to come from different planets. For example, according to USTA/NERA, MCI's revenue per minute increased by 9.5 percent in the first half of 1998 (p. 11), while Goldman Sachs shows a gap decrease of 9.7 percent and 7.8 percent in the first two quarters of 1998, respectively. Although there is not a perfect overlap in the periods compared by the two studies, or in the precise method used to calculate changes in revenue per minute, the difference in the estimates reveals serious problems with the results provided by USTA's consultants.

A likely rebuttal from USTA is that the Goldman Sachs gap estimate covers all long distance services – business and residential – while its study is residential only. This is true, but the implication of this argument would be that business rates declined by enough (approximately 25 percent) to outweigh the residential increase and yield a weighted average reduction (in the gap) of approximately 9 percent. The hypothesis inherent in this argument is that business rates have been declining so steeply year-after-year that these reductions mask steadily increasing residential rates. Since all parties agree that the business market has been intensely competitive for years, it is difficult to imagine how such enormous price cuts to business customers could occur so recently, and in such a short period of time. Indeed, if the business long distance market has been competitive for many years, then recent price cuts should be limited to decreases in cost, yet business market cost reductions were well below 25 percent in the last year. USTA's likely explanation for the gap is nearly impossible to fit into an economic model that might reasonably characterize the long distance industry.

One of the key problems with the USTA/NERA analysis is that they never explain why the "monopoly" long distance companies exert their market power bit-by-bit, rather than setting their prices initially at monopoly levels and then resetting them to maximize their profits as costs change. If the long distance carriers truly behaved like a monopoly (or collusive oligopoly), they would actually lower prices when their costs fell, not raise them. Even a monopolist reduces price when marginal costs fall. The USTA/NERA study, which posits steadily increasing prices as costs decline, is not consistent with their long-expressed view that the long distance industry has been an effective collusive

oligopoly for many years. Indeed, USTA's claims are not consistent with any economic model of monopoly or competition. Rather, the objective facts demonstrate that, as we have previously shown the Commission, long distance rates have steadily declined to the benefit of both residential and business long distance customers.

The NERA Sampling Technique is Questionable

There are a number of steps in the NERA analysis that offer room for creativity. For example, the sample period chosen was different for AT&T versus MCI and Sprint. The explanation given for this practice is that it was necessary to generate an "adequate sample size" for MCI and Sprint. But it is not clear whether the small sample sizes are an accurate representation of long distance customers or whether the time periods and sample sizes were chosen to yield predetermined results. The use of population weights in the study indicates that the underlying, unweighted sample is not representative of the population. While weighting might make the sample more representative of national population norms, it does so only if the non-respondents are "identical" to the respondents. Also, there is no assurance that the sample is random. Survey data frequently is beset with both sample and self selection biases. Further, the multitude of NERA's manipulations to the data (e.g., footnotes 12, 21, 23, 28, 27) allows even more opportunities to introduce bias into the analysis. While the authors are always careful to *assume* that the bias induced by these manipulations is trivial, no formal statistical analysis of the bias is attempted. In fact, no analysis of the quality of the data or of the statistical accuracy of their estimates or comparisons between their estimates is provided.

Timing is Everything

Perhaps the greatest indication of bias in the study is the creative use of timing. When indicia of price and/or cost move up and down over time, supporting a given hypothesis may be accomplished by the careful selection of the moment in time data are evaluated. For example, NERA notes that the Bureau of Labor Statistics' interstate toll price index rose from 75.2 in December 1997 to 76.1 in June 1998. Extending the latter time period to August 1998 reveals that the BLS interstate toll price index has fallen to 74.5, suggesting long distance prices had indeed fallen contrary to USTA's claims. Even larger reductions would be found by choosing June 1997 as the starting point -- a month prior to the first access charge reductions resulting from the FCC's price-cap and access reform decision -- when the BLS index was 78.8. Even though the BLS index is not as reliable as one would hope, it does demonstrate the sensitivity of estimates of price changes to the time periods chosen.

The careful choice of time periods is no less relevant to the evaluation of tariff rates or average revenue. Since 1990, interstate access charges have fallen an average of

8 percent each year.¹ It would be silly to presume that the long distance carriers would not incorporate the expectation of these reductions into their pricing decisions. If a long distance carrier expects a reduction in access charges in January, for example, it is likely that price reductions will be initiated a few months prior in order to 'get a jump on' its rivals. With strong competitive pressure, the price cut associated with an expected cost reduction will pre-date the realized cost reduction by more and more months. Thus, the price reduction is fully reflected in rates prior to the cost reduction. It should not be surprising to find that prices did not fall significantly from November 1997 to June 1998, if the effect of the cost reduction was incorporated into the price before November 1997. In fact, that is exactly what happened when, in September 1997, MCI introduced its popular "5 Cent Sundays" price that applied to all residential customer calling plans. It is likely, therefore, that one of the major flaws in the NERA study is that it simply missed the price reductions.

I urge you, Mr. Chairman, to ignore the fiction propagated by the local telephone monopolies. Their "Through the Looking Glass" world of a competitive local telephone industry and a monopoly long distance industry flies in the face of marketplace reality and common sense. Consumers have no choice of local carrier, but abundant choice of long distance carrier. So long as the local telephone companies obstruct competition to protect their monopoly profits, access charges must be forced down by regulation to the benefit of consumers.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Pelcovits", followed by a large, stylized flourish or initial.

Michael D. Pelcovits, Ph.D.
Chief Economist
MCI WorldCom

cc: Kathryn Brown
Larry Strickling
Tom Power
James Casserly
Paul Gallant
Kyle Dixon
Kevin Martin

¹ FCC, *Trends in Telephone Service Report* (July 1998).

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Comments were sent via first class mail, postage paid, to the following on this 13th day of November, 1998.

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Washington, DC 20554

Commissioner Harold Furchtgott-Roth**
Federal Communications Commission
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Commissioner Michael Powell**
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Commissioner Gloria Tristani**
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Comments of MCI WorldCom, Inc.
November 13, 1998

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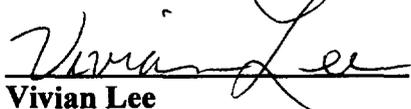
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